

## REMARKS/ARGUMENTS

Applicant acknowledges receipt of the Office Action dated May 10, 2010. By this Response, claims 21 and 22 are added as new claims. Claims 1, 3-8, and 10-22 are pending in this application. Claims 1, 3-8, and 10-20 are rejected under 35 U.S.C. §103 as being unpatentable over *Engel*, U.S. Patent No. 2,911,291 ("*Engel*"). Applicant believes the pending claims are allowable over the art of record and respectfully requests reconsideration and allowance of all claims.

### **I. Claims 1, 3-8, and 10-20 are patentable over *Engel*.**

Applicant respectfully traverses the Examiner's rejection of claims 1, 3-8, and 10-20 under §103 as being unpatentable over *Engel*. Applicant submits that the Examiner has not made a *prima facie* case of obviousness in rejecting such claims.

Claim 1 is an independent claim upon which claims 3-8 and 10-20 depend. Claim 1 recites that the "probe includes an elongate cylinder portion which is arranged to rotate about a longitudinal axis of the elongate cylinder portion and to move longitudinally to enable the cylinder to be immersed in the sample." Nothing in *Engel* teaches or suggests an elongate cylinder portion that is arranged to move longitudinally to enable the cylinder to be immersed in the sample. The Examiner set forth that "*Engel* does not specifically designate that the cylinder is arranged 'to move longitudinally'. However . . . it would appear that some degree of longitudinal movement would be required for this mounting . . . ." (Office Action, page 3, lns. 5-10, emphasis added) Applicant respectfully sets forth that *Engel* cannot have an elongate cylinder portion that is arranged to move longitudinally to enable the cylinder to be immersed in the sample. For instance, *Engel* specifically teaches that the hollow shaft . . . rigidly supports the turbine 30, heating elements 33, the catalytic reacting type filter element 48, and filtering elements 58, 66, 74, and 85, as well as deflectors 54 and 90, pulley 25 and the rotative fluid carrying tube 92." (*Engel*, col. 2, lns. 38-43, emphasis added) Because the hollow shaft of

*Engel* is required to rigidly support all of such elements, Applicant respectfully sets forth that *Engel* clearly cannot move longitudinally as required by independent claim 1.

In view of the recitations in independent claim 1 that are neither taught nor suggested by *Engel*, the Applicant respectfully submits that independent claim 1 is allowable over *Engel*. Applicant therefore requests that the Examiner withdraw the §103 rejections of dependent claims 3-8 and 10-20, since it is submitted that independent claim 1 is allowable. Dependent claims 3-8 and 10-20 must be allowable, since they carry all the limitations of the allowable independent claim 1 to which they refer.

## **II. New claims 21 and 22 are allowable.**

Claims 21 and 22 have been added by this Response. Applicant respectfully submits that new claims 21 and 22 are allowable because references do not disclose all of the recited recitations in such claims.

## **III. Conclusion**

Applicant respectfully requests reconsideration, allowance of the pending claims and a timely Notice of Allowance be issued in this case. If the Examiner feels that a telephone conference would expedite the resolution of this case, the Examiner is respectfully requested to contact the undersigned.

In the course of the foregoing discussions, Applicant may have at times referred to claim limitations in shorthand fashion or may have focused on a particular claim element. This discussion should not be interpreted to mean that the other limitations can be ignored or dismissed. The claims must be viewed as a whole, and each limitation of the claims must be considered when determining the patentability of the claims. Moreover, it should be understood

Appl. No. 10/577,501  
Response to Office Action  
Dated May 10, 2010

that there may be other distinctions between the claims and the prior art that have yet to be raised but which may be raised in the future.

Respectfully submitted,

/ttumey/  
Tod T. Tumey  
Tumey L.L.P.  
Reg. No. 47,146  
P. O. Box 22188  
Houston, Texas 77227-2188  
(713) 622-7005 (Phone)  
(713) 622-0220 (Fax)  
ATTORNEY FOR APPLICANT